

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

**RECEIVED**

**JAN 2 - 1990**

In re:

Federal Communications Commission  
Office of the Secretary

Applications For Renewal Of License Of  
The Following Missouri Radio Stations:

KFUO-AM-FM, Clayton  
KARO-FM, Columbia  
KRJY-FM, St. Louis

TO THE CHIEF, MASS MEDIA BUREAU

94-10

**PETITION TO DENY**

The Missouri State Conference of Branches of the NAACP and the respective branches of the NAACP operating within the service areas of the above-referenced radio stations (collectively "Petitioners"), pursuant to §§307 and 309 of the Communications Act of 1934 and §73.3584 of the FCC's Rules and Regulations, respectfully request the Commission to designate the above referenced applications for evidentiary hearings and, based on the evidence expected to be adduced at these hearings, to deny the applications. 1/

**BACKGROUND**

The filing of this petition is the result of a study by Petitioners of the 1983-1989 EEO performance and 1989 renewal applications of all radio stations in Missouri counties and MSA's of greater than 5% minority population. That study identified the stations subject to this petition as having had no more than token employment of Blacks and other minorities during the license term. These stations do not appear to be operating under meaningful EEO programs, nor have the stations proposed meaningful EEO programs for the coming 1990-1996 renewal term.

It is well established that the Commission cannot grant a license renewal application without further investigation if it lacks sufficient facts to determine that renewal would serve the public interest. In the leading case setting out the requirements for Commission review of serious allegations of violations by licensees of its EEO Rule, 47 CFR §73.2080, Bilingual-Bicultural Coalition on the Mass Media v. FCC, 595 F.2d 621, 629-630 (D.C. Cir. 1978), the court explained:

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1/ Owing to the number of stations against which Petitioners are compelled to litigate, and thus the large amount of paper being generated, Petitioners respectfully request waiver of \$1.49 of the Commission's Rules (double-spaced pleadings) in order to conserve expenditures for all concerned.

[e]vidence of substantial statistical disparity - evidence that a licensee's minority employment is outside the "zone of reasonableness" - while it may not in itself necessarily require resolution at a hearing, should at least put the FCC on notice that more information is required before the license renewal application can be granted. This is because a substantial statistical disparity, especially when coupled with a languishing affirmative action plan, raises questions as to whether the station's poor EEO performance owes to inadvertence, or to intentional discrimination. (fns. omitted; emphasis in original.)

Such an inquiry should be conducted even if the statistical record reveals operation falling barely above the rule of thumb working definition of the "zone of reasonableness," since this "zone" is expected to contract over time. 2/

Petitioners to deny are to be fully involved in this inquiry. The procedure to be followed, as directed by the Bilingual court, supra at 634, is that

[t]he full report of the Commission's investigation, including all evidence it receives, must be placed in the public record, and a reasonable time allowed for response and rebuttal by petitioners.

The following discussion will focus on the factual record contained in the annual employment reports, and the EEO programs as proposed for the 1989-1996 renewal term. 3/

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2/ Los Angeles Women's Coalition for Better Broadcasting v. FCC, 584 F.2d 1089 (D.C. Cir. 1978). Thus, what was reasonable in the 1980-1983 renewal period cannot be deemed reasonable now, since each licensee is expected to resolutely and deliberately improve the representation of minorities on its staff with the ultimate goal of attaining parity with the representation of minorities in the workforce of the surrounding community. The Commission has determined that the 50% of parity guideline is not a "safe harbor" but instead is only an administrative tool. Florida Renewals, 3 FCC Rcd 1930 (1988); Broadcast EEO, 2 FCC Rcd 3967, 3974 (1987).

3/ All employment statistics contained in this petition are derived from the FCC Form 395s submitted by the licensees to the Commission and covering a reporting week in March of the relevant year. The percentages of minority representation in the respective communities are as follows: Clayton and St. Louis: 15.6%; Columbia: 8.2%. As used herein, "top-four job categories" refers to officials and managers, professionals, technicians and salespersons as reported on FCC Form 395. "Parity" refers to the level of minority employment which, as a percentage of the station's top-four category or total fulltime employment, would equal the percentage of minorities in the MSA workforce.

STATION BY STATION ANALYSIS

KFUO-AM-FM, Clayton

KFUO-AM and KFUD-FM have been owned and operated by the Lutheran Church - Missouri Synod since 1924 and 1948 respectively. The stations' record of fulltime minority employment since 1983 is reflected in the following table.

Table 1. Minority Employment at KFUD-AM-FM, 1983-1989

Month and Year	# Mins./#Empls., Top 4 Cateqs.	# Mins./#Empls., Total Fulltime	% of Parity, Top 4 Cateqs.	% of Parity, Total Fulltime
1989	1/22	1/26	29%	25%
1988	0/19	0/23	0%	0%
1987	0/16	0/18	0%	0%
1986	0/14	1/17	0%	38%
1985	1/15	2/17	43%	75%
1984	1/15	1/18	43%	36%
1983	1/14	1/17	46%	38%

This record is even worse than it appears. The only fulltime minority employee in 1989 was a Hispanic female sales worker. Hispanics are not represented in the market in significant numbers. Furthermore, of the 15 parttime employees, none was Black. Thus, this St. Louis market radio station reported no Blacks among 41 employees this year.

KFUO's 1989 EEO program specifies no minority organizations, no minority media, no minority educational institutions, and no minorities hired in the preceding twelve month period. Only unspecified "employment services, including state employment agencies" are contacted. In what appears to be a rather heavy-handed attempt to generate an EEO paper trail, they are sent a "reply form" to sign. The form requires them to "acknowledge that [they] have received a letter from Station KFUD-FM seeking female and minority referrals for job openings at the station[.]"

The EEO program is also deficient in its failure to specify data on top four job category hires, the availability of minorities and women in the labor force, or referrals from any sources of whatever nature.

It is reasonable to infer that this station accumulated nearly the worst minority hiring record of any station in Missouri throughout the license term because it really had no EEO program in any meaningful sense of the term.

Since the licensee's noncompliance is so self-evident, there are no facts in dispute which require a Bilingual investigation. Instead, the renewal applications should be designated for hearing and promptly denied.

**KARO-FM, Columbia**

KARO-FM has been owned and operated by Columbia FM, Inc. since February, 1983. The station's record of fulltime minority employment since 1983 is reflected in the following table.

**Table 2. Minority Employment at KARO-FM, 1983-1989**

<u>Month and Year</u>	<u># Mins./#Empls., Top 4 Categs.</u>	<u># Mins./#Empls., Total Fulltime</u>	<u>% of Parity, Top 4 Categs.</u>	<u>% of Parity, Total Fulltime</u>
1989	0/17	1/18	0%	68%
1988	0/16	0/17	0%	0%
1987	0/15	0/16	0%	0%
1986	0/13	0/13	0%	0%
1985	0/10	0/11	0%	0%
1984	0/10	0/10	0%	0%
1983	no data available.			

This record is even worse than it appears. The station reported no minorities among the four to ten parttime workers employed in any reporting year. The only fulltime minority employee in 1989 was a Hispanic female clerical worker. Hispanics are not represented in the market in significant numbers. There are no minorities among the ten parttime employees. Thus, this station reported no Blacks among its 28 employees this year.

KARO's 1989 EEO program specifies a number of organizations purportedly used for job recruitment, including the NAACP and Lincoln University, a historically Black institution. However, it is unclear from the nonspecific narrative in Section VIII of the program what, if anything, the station actually did to maintain communication with these sources and refer all openings to them throughout the license term. Most of the sources are reported as having generated no referrals, including Lincoln University and the NAACP. Neither the Columbia Branch of the NAACP nor the Lincoln University Placement Office has any record of any referrals from KARO-FM. 4/

Accordingly, the Commission should undertake a Bilingual investigation to determine whether the station's questionable EEO program, coupled with the station's failure to employ more than a token number of minorities throughout the license term, are indicative of a deliberate violation of the EEO Rule or of discrimination.

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4/ Petitioners draw the staff's attention to the fact that Lincoln University has been typed onto the form index-unjustified with the other sources on the form. This tends to confirm that it was a last-minute addition to the form rather than a regular recruitment source.

**KRJY-FM, St. Louis**

KRJY-FM has been owned and operated by Communications Fund, Inc. since 1970. The station's record of fulltime minority employment since 1983 is reflected in the following table.

**Table 3. Minority Employment at KRJY-FM, 1983-1989**

<u>Month and Year</u>	<u># Mins./#Empls., Top 4 Categs.</u>	<u># Mins./#Empls., Total Fulltime</u>	<u>% of Parity, Top 4 Categs.</u>	<u>% of Parity, Total Fulltime</u>
1989	1/17	3/25	38%	77%
1988	1/17	3/23	38%	84%
1987	1/16	3/20	40%	96%
1986	2/17	3/22	75%	87%
1985	1/17	3/25	38%	77%
1984	1/15	2/21	0%	61%
1983	1/15	3/21	43%	92%

On paper, the station's EEO program is adequate in demonstrating the productive use of recruitment sources. However, the program's deficiency in practice is evident from the licensee's failure to actually hire and employ more than a token number of the minorities it says it has recruited. During every year in the license term but one, the statistical record of minority employment has not even met the FCC's very modest internal processing guidelines. 5/ There is no evidence that the licensee has conducted the self-analysis which is necessary when there is a significant disparity. See 47 CFR §73.2080(3)(c)(ii).

Accordingly, the Commission should undertake a Bilingual investigation to determine whether the station's questionable EEO program, coupled with the station's failure to employ more than a token number of minorities throughout the license term, are indicative of a deliberate violation of the EEO Rule or of discrimination.

**CONCLUSION**

For the foregoing reasons, the Commission should initiate Bilingual investigations of KARO-FM and KRJY-FM. If the evidence thereby elicited so requires, the Commission should designate these applications for hearing and thereafter deny them. The applications of KFYO-AM-FM should be promptly designated for hearing and thereafter denied.

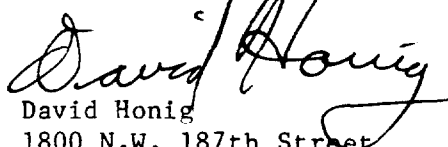
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5/ This is particularly unusual considering that the station is situated in a major media market (St. Louis) which has a wealth of eligible minorities eligible and qualified for media employment. No other radio station licensed to St. Louis has demonstrated such a low level of minority employment throughout the license term.

Respectfully submitted,

Herbert H. Henderson / Bc

Herbert H. Henderson  
Interim General Counsel  
National Association for the  
Advancement of Colored People  
4805 Mt. Hope Drive  
Baltimore, Maryland 21215

  
David Honig  
1800 N.W. 187th Street  
Miami, Florida 33056

Counsel for Petitioners

January 2, 1990

DECLARATION

RE: Missouri Radio License Renewals  
Petition to Deny

I hereby subscribe to the foregoing Petition to Deny. The facts stated therein are true to my personal knowledge except where identified as having been based upon official records such as statistical data and material on file with the Federal Communications Commission.

I would be seriously aggrieved if the Petition to Deny is not granted, since members of the NAACP, including myself, would be deprived of job opportunities and program service in the public interest.

This statement is true to my personal knowledge and is made under penalty of perjury under the laws of the United States of America.



William Mallory  
President  
Missouri State Conference of  
Branches of the NAACP  
2019 Gordon St.  
Hannibal, MO 63401

Dated: 12-21-84

**DECLARATION**

RE: KFUO-AM-FM, Clayton, Missouri

I hereby subscribe to the foregoing Petition to Deny. The facts stated therein are true to my personal knowledge except where identified as having been based upon official records such as statistical data and material on file with the Federal Communications Commission.

I am a regular listener to the station.

I would be seriously aggrieved if the Petition to Deny is not granted, since members of the NAACP, including myself, would be deprived of job opportunities and program service in the public interest.

This statement is true to my personal knowledge and is made under penalty of perjury under the laws of the United States of America.



Rev. James F. DeClue  
President

St. Louis Branch of the NAACP  
1408 N. Kings Highway #221  
St. Louis, MO 30314

Dated: 12-28-89



DECLARATION

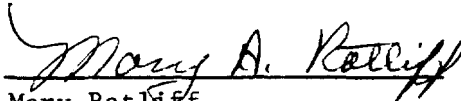
RE: KARO-FM, Columbia, Missouri

I hereby subscribe to the foregoing Petition to Deny. The facts stated therein are true to my personal knowledge except where identified as having been based upon official records such as statistical data and material on file with the Federal Communications Commission.

I am a regular listener to the station.

I would be seriously aggrieved if the Petition to Deny is not granted, since members of the NAACP, including myself, would be deprived of job opportunities and program service in the public interest.

This statement is true to my personal knowledge and is made under penalty of perjury under the laws of the United States of America.

  
Mary Ratliff  
President  
Columbia Branch of the NAACP  
211 Park DeVille  
Columbia, MO 65203

Dated: 12/26/89

**DECLARATION**

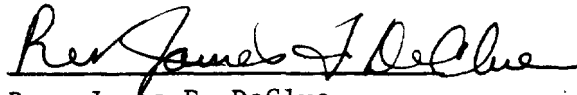
RE: KRJY-FM, St. Louis, Missouri

I hereby subscribe to the foregoing Petition to Deny. The facts stated therein are true to my personal knowledge except where identified as having been based upon official records such as statistical data and material on file with the Federal Communications Commission.

I am a regular listener to the station.

I would be seriously aggrieved if the Petition to Deny is not granted, since members of the NAACP, including myself, would be deprived of job opportunities and program service in the public interest.

This statement is true to my personal knowledge and is made under penalty of perjury under the laws of the United States of America.



Rev. James F. DeClue

President

St. Louis Branch of the NAACP

1408 N. Kings Highway #221

St. Louis, MO 30314

Dated: 12-28-89

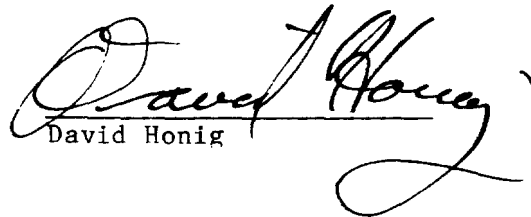
**CERTIFICATE OF SERVICE**

I, David Honig, hereby certify that I have this 2nd day of January, 1990 caused a copy of the foregoing "Petition to Deny" to be delivered via U.S. First Class Mail, postage prepaid, to the following:

Lutheran Church/Missouri  
85 Founders Lane  
St. Louis, MO 63105  
Licensee of KFUP-AM-FM

Columbia FM, Inc.  
503 Old 63 North  
Columbia, MO 65201  
Licensee of KARO-FM

Communications Fund, Inc.  
7530 Forsyth Blvd.  
St. Louis, MO 63105  
Licensee of KRJY-FM

  
David Honig